

Defective Delinquent
Law Task Force

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Historical Background

The problem of the so-called "defective delinquent" has remained controversial, and largely unresolved, for over half a century. The controversy has centered around two main issues: (1) the relationship of intelligence to criminal behavior, and (2) the type of treatment which will be most effective in dealing with the mentally retarded delinquent.

In 1912, Dr. Walter E. Fernald stated that "the feeble-minded are a parasitic, predatory class, never capable of self-support or of managing their own affairs. The great majority.. are a menace and danger (to the community.) Every feeble-minded person, especially the high-grade imbecile, is a potential criminal, needing only the proper environment and opportunity for the development and expression of his criminal tendencies." (p.48, Davies) At that time estimates of subnormal intelligence among delinquents ranged from 0.5 to 55%, with the majority of opinions clustered around the higher figures.(1) Yet as early as 1917 Doll suggested that "natural factors such as isolation, artificial factors such as court attitudes and probation failures, and combined factors of nationality, age, sex, etc.," had not been controlled in previous studies and had therefore contaminated or biased the results to reflect a spuriously high correlation between low intelligence and delinquent behavior.(2) In 1923 Burt (3) declared that "the proportion of intellectually defective cases among the delinquent population... is in the neighborhood of 5% not 50." Although analysis of 4,000 young repeating offenders, studied between 1909 and 1923 by Dr. William Healy and Dr. Augusta Bronner (Davies, 94), revealed that 13.5% of the group were "clearly subnormal", these investigators asserted that follow-up studies indicated that poor environment was largely the determining factor in the delinquencies, that "it is impossible to explain delinquency in terms of a numerical intelligence quotient."

An insightful approach to understanding the mentally retarded delinquent appeared in the Glueck's observation (1935), based on studies of literally thousands of Juvenile delinquents, that "mental deficiency, though not a direct cause of delinquency, is a complicating factor of great potency, the presence of which, in addition to other causative influences, severely breaks down the individual's resistance to antisocial behavior."(5)

Defective Delinquent

Penrose (1938) suggested that solving the problem of mental health, whether of retarded or normal individuals, was the key to delinquency and crime. (6) Along these lines, Foulds' research (1945) with retarded delinquents revealed that "87% of the extrapunitive subjects have a marked feeling of rejection, either because their parents reject them or treat them harshly. 67% of the intropunitives overcompensate in their conscious attachment to their parents for an unconscious feeling of neglect, while 46% of impunitives are over attached to their parents, usually because they have been spoiled." Only 13% of the total group had "balanced" relationships with their parents. (9) Ehrenwald felt that (1945) delinquent behavior of the retarded was primarily a compensation for their perceptions of their own inadequacies.(10)

However, the attitude of the majority of workers has not been so understanding. In 1944, Lurie et al wrote, "Because of a combination of poor mental heredity, vicious home influences, and conditioning, the defective delinquent is an intellectually retarded, emotionally immature, and socially inadequate individual. The prognosis with regard to cure of his behavior is uniformly poor. At present, commitment for life to a custodial institution especially equipped to treat this type of child offers the only solution from the standpoint of society. (7) Westwell (1951) described defective delinquents as a "small but devastating group" who when "relegated to schools for the mentally deficient (are) the equivalent of wolves loose in a flock of sheep."(8)

More recent research has returned to a more temperate view. For example, Levy (1954) found that the rate of mental deficiency in the population of a state penitentiary was approximately the same as that in the general populations he concluded that mental retardation was not too important in the etiology of criminal behavior. (11) Smith attributed delinquent behavior of the retarded to "lack of insight, misunderstandings, or lack of appropriate supervision," and not to any predilection for crime. (12) Hatt and Gibby (1958) treat delinquent behavior of the retarded child as "amoral" rather than "immoral", in that he "often is not aware of the consequences (and thus is not really "delinquent")...is oblivious to the fact that he is breaking some particular law,,,impulses are not as readily controlled...does not have the capacity to 'cover up' or to 'get away'". These authors point out that the "storm and stress" of a normal child's adolescence, which may result in delinquent behavior, are for the retarded child a "typhoon" which he cannot always master. (13)

Current Thinking

Begab (1963) emphasises the fact that it is the mildly retarded who will most frequently be found engaging in delinquent behaviors, that the moderately or severely retarded seldom commit delinquent acts--and then only at the instigation of their more intelligent peers. He presents perhaps the most comprehensive analysis of delinquent behavior of the mentally retarded to be found in the literature:

Often, these children are confronted with so many barriers to success and so many demands for achievement, that these cannot be overcome by avoidance, except perhaps through withdrawal. To reduce the tensions that accumulate, the retarded child may react in various ways. He may respond with overt indifference or an external display of feeling! he may repress his hostility, turning his feelings inward; or he may "act out" his resentments. All of these responses and variations of them are utilized, but in the majority of instances, the "acting-out" mechanism is predominant. In a minority of cases, particularly where the individual has no constructive social outlets for his pent up aggressions, feelings may be acted out in a socially unacceptable though not necessarily delinquent manner. Should this occur, the attitudes of the community are apt to become even more uncompromising and hostile, thereby placing added stress on the individual's capacity for social adjustment. The interaction of these factors are partly responsible for the high incidence of emotional disturbance and behavior disorders among the mildly retarded.

A fairly widespread concern-shared by parents and public alike-is that the retarded are characteristically suggestible and "easily led" and that low intelligence is a primary cause of their social misconduct. Logic would suggest that individuals who are unable to discern whether what they are told to do is acceptable or not, are prone to get into trouble. And indeed this is sometimes the reasonable explanation for certain types of misconduct among the retarded. Where "gang" delinquency is involved, for example, the retarded are prone to be goaded into taking daring chances, thus becoming the "fall guys" for the rest of the group. In many instances however-particularly where these behavior patterns are well established-parental attempts to explain their retarded child's behavior as due to the influence of "bad company" are unfounded rationalizations.

Actually, not all of the mildly retarded are suggestible, nor are all persons of normal intellect free from this trait. The retarded as a group, nevertheless probably need more protection against exploitation than other persons. Their vulnerability is heightened at least in part by their unsatisfied emotional needs. The mildly retarded adolescent or adult is often "led into trouble"-even when he understands the unacceptable nature of his acts-because that may be the only way he knows to gain acceptance and recognition from his peers. Fulfilling these basic needs for "belonging" can minimize the suggestibility of some retardates and safeguard them from the negative influence of undesirable companions.

The exact role of low mentality in the causation of delinquent or antisocial behavior is still unknown. Though a cause-effect relationship between deficiency and delinquency is being challenged by many of today's professional practitioners and researchers, the attitudes of the lay public toward this problem lag far behind current knowledge. This situation is clearly illustrated in recent newspaper articles prompted by public agitation over the high incidence of illegitimate children born to mothers on public welfare rolls. In the views of one columnist;

The woman who continues to have children out of wedlock does so not because she is immoral or because she wants more money, but because in almost every instance she is a moron..Since morons tend to beget morons,..these subnormal women should be sterilized. Or, if that is too much for the squeamish to tolerate, they should be confined to institutions. They should not, in the interest of these children as well as society in general, be permitted to multiply their kind.*

It is highly questionable whether the women who repeatedly bear children out of wedlock are in fact predominantly of low mentality and it is equally debatable whether the latter causes the former. These women usually live under conditions which may and do foster promiscuity and other forms of unacceptable behavior among them, whatever their level of intelligence.

Such ill-founded opinions and misconceptions as those expressed by the columnist are not to be dismissed lightly,, They are partly responsible for the widespread fear of parents that their mildly retarded children will be exploited or become delinquent. Nor can the courts, welfare agencies, correctional facilities, institutions for the retarded, and other public supported programs fully escape the social pressures that such misinformation arouses. When these attitudes influence practice-as they frequently do-and the symptoms rather than the underlying causes of the

* "Morals and Money and Morons" (Editorial) Washington Daily News, July 24, 1961.

behavior dictate the course of action to be taken, the problem is frequently compounded instead of resolved.

The exact incidence of delinquent behavior among the mildly retarded is not yet known. A summary of various studies, however, indicates that from 1934 to 1950, the percentage of defectives (IQ's below 70) in the delinquent population declined gradually from 13 percent to 4 percent. At the same time, the average intelligence of the total delinquent group rose from an IQ of 79 to 92 notwithstanding the fairly high proportion of disturbed adolescents whose test performance might be affected by emotional factors.* This marked differential does not necessarily reflect a true increase in the intelligence level of delinquents, though the higher incidence of delinquency among middle-class families may contribute in a minor way to this change. More likely, the wide variation in the results of different investigators is due to the use of varying criteria of defect, more refined testing instruments, greater awareness of other contributing variables and improved methodology.

The comparability of the intellectual levels of delinquents and non-delinquents (a difference of 13 IQ points) suggests little if any causal relationship between deficiency and delinquency, but this is not conclusive and more controlled studies are needed. Averages tend to conceal the extreme deviations from which the average is computed and the IQ, as stated earlier, is not a wholly reliable basis for estimating an individual's knowledge and ability to conform to socially accepted standards of behavior. The impact of low intelligence on behavior takes on greater meaning when seen in relation to the host of psychological and social forces which contribute to delinquent behavior in all persons.

Considering that the mentally retarded-particularly the cultural-familial group-are often subject to adverse family and community conditions and are prone to "act out" their frustrations and hostility, it is surprising that the incidence of delinquent behavior among them is no greater than it is. An examination of their home environments reveals a significantly higher incidence of adverse factors than is found in the homes of brighter delinquents. More family members have low intelligence, the educational, literacy and occupational status of parents is lower, home conditions are more frequently overcrowded and dirty, and the parent-child relationship is more often unfavorable.

The importance of these factors, and the equally obvious influence of negative social forces outside the home, preclude a single-factor view of causation. It cannot be stated with certainty how much measured intelligence is needed to distinguish "right from wrong" or to foresee the consequences of one's behavior, but there is ample evidence that most of the mildly retarded are not seriously handicapped in this regard. A recent study by Marden and Barber** suggests that retarded boys in institutions attribute status to their peers by the same value system that characterizes most of society. They respect cleanliness, conformity to rules and regulations,

* Woodward, Mary: "The Role of Low Intelligence in Delinquency," The British Journal of Delinquency, April 1955, Vol. V, No. 4, p. 285.

** Marden, Philip W. and Bernard Farber: "High-brow Versus Low-Grade Status Among Institutionalized Mentally Retarded Boys," Social Problems, Spring 1961, Vol. 8, No. 4.

vocational and social independence, sociability and intelligence. Whether these values were learned in the institution or existed prior to admission does not reflect on the capacities of these boys to understand, and in many cases to incorporate, socially acceptable standards of behavior.

In personality traits, the mildly retarded who commit delinquent acts are more like delinquents of normal intelligence than they are like the retarded non-delinquent. They are prone to be impulsive, are lacking in self-control and demonstrate more hostility, resentment and defiance than the non-delinquent of average or retarded intellect. They are for the most part more assertive socially than most retarded individuals and express to a greater extent feelings of rejection and lack of status.

The relationship of low intelligence to delinquency is aptly summarized by Woodward, in her survey of research:*

The conclusion derived from this survey is that low intelligence plays little or no part in delinquency. In a certain unknown proportion of delinquents, pressure to do work at a level or rate which is rendered impossible by low ability gives rise to stress. When there is a good deal of strain due to other adverse factors, this additional stress may exacerbate the situation and low intelligence may thus indirectly act as an aggravating factor, although it does not appear to do so in a sufficient number of cases to make dull children more numerous in a delinquent population than among comparable nondelinquents.

Parental fears that mildly retarded children will become delinquent would appear to be highly exaggerated. Lack of foresight and the incapacity to judge right from wrong are not primary factors in the delinquent behavior of most of these youngsters. The stress-producing effects of low intelligence are contributing factors, but these can, to some degree, be avoided. Given the opportunity for a favorable home environment professional guidance and treatments, constructive social and recreational outlets, suitable work, and educational experiences among peers with whom they can compete on equal terms, delinquent patterns are not likely to develop.

Unfortunately, the absence of the ideal conditions described by Begab ensures the development of delinquent behavior on the part of some mentally retarded individuals, as on the part of their normal peers.

Treatment

Most authors concur that treatment of the defective delinquent is difficult to carry out. Davies presents the dilemma clearly:

For those who have actually been convicted of offenses, the usual penal procedures of probation, determinate sentence, and parole, on the assumption that the offender has normal potentialities and can be socially rehabilitated, do not successfully apply. For the others, the

* Woodward, op. cit.

younger group for the most part, who have committed no serious overt acts, but whose antisocial tendencies are recognized, and who are committed to the regular state schools for mental defectives, the usual training methods also fall short.(5)

In an article in "Children" for March-April 1965, Bertram Bak, Executive Director of New York's Mobilization for Youth program, states that, as a result of the work of the President's Committee on Juvenile Delinquency, "exclusive emphasis on treatment would be viewed as naive...The emphasis has shifted from rearranging the delinquent, so that he will respond to society in a more acceptable way, to rearranging society..., to the creation of communities in which the value of full development of each human being is articulated in the structures of the community." (, p. 72)

Joseph Weingold, Executive Director of the New York State ARC, in an excellent paper entitled "Toward a New Concept of the Delinquent Defective (delivered before the A.A.M.D. Convention in June, 1965) refers to the Beck article and stresses the pertinence of changing the values of society and the community so that the mentally retarded youth will find acceptance and a place in the vocational and social milieu. He argues further that State institutions must "change internally" so that they can influence and change the value system of the delinquent retardate, who at present is being asked to "function in a microcosm of society with rewards and punishments" which he cannot comprehend. Mr. Weingold does not feel that the defective delinquent should be incarcerated but that he should be dealt with within the State institutions.

Treatment concerns have primarily centered around those retarded who, in the words of the President's Task Force on Law, "exhibit persistent uncontrolled behavior threatening the well-being of others."(16) There is general agreement in the literature that these persons should be treated in a separate facility where they can receive specialised attention. Whether this unit should be an independent institution, within the correctional system or not, part of another

facility, etc. is open to dispute.

Various states have dealt with the problem in various ways. For example, Massachusetts has operated a separate division for male defective delinquents since 1922, and for females since 1926, both within the State Farm at Bridgewater. At Bridgewater there are rooms with outside windows instead of cells. Emphasis is placed on "treatment rather than punishment". Rehabilitation plus return to the community is the primary goal, with inmates recommended for parole whenever feasible.

In 1921 New York established the first separate institution for defective delinquents in the country at Napanoch. This institution is for the "care, training and custody of male mental defectives over 16", who are "charged with, arraigned for, or convicted of" criminal offenses. A unique feature of Napanoch is that by law all commitments there are for life., so long as the superintendent does not feel that release to society is warranted, Napanoch is said to combine the features of a penal institution and an institution for the retarded. There are cell blocks as well as dormitories, to which assignments are made in terms of individual needs. Administration was for the first six years under the State Commission for Mental Defectives, but is now under the Department of Corrections. Treatment includes psychiatric and psychological services, group therapy, and industrial training.

Connecticut passed a law in 1939 for segregation of defective delinquents, but it was repealed when a new bill for an institution to accommodate them was passed in 1957!

Maryland is the only state to have passed a "defective delinquent law", namely that a defective delinquent is

an individual who by the demonstration of persistent, aggravated, antisocial or criminal behavior, evidences a propensity towards criminal activity and who is found to have either such intellectual deficiency or emotional imbalance, or both, as to clearly demonstrate an actual danger to society, so as to require such confinement and treatment when appropriate, as may make it reason-

ably safe for society to terminate the confinement and treatment.
Article 31B of Annotated Code at State of Maryland.(17}

An individual must be convicted and sentenced to a penal institution, at which point the judge, defense, prosecution, or relative can ask for referral to Patuxent Institution for examination (by psychiatrist, psychologist, and M.D.) under the Defective Delinquent law. If it is decided that he is a defective delinquent, he is given a civil hearing; if the court agrees, sentence is suspended and he is committed to Patuxent for an indeterminate periods. An advisory board consisting of university professors, members of the bar association, psychiatrists, etc has authority to parole, rather than the State Board of Parole. The institution is operated as a "prison plus mental hospital." Therapy consists of "environmental manipulation", namely: the indeterminate sentence as motivation for change; the graded tier system; school vocational trainings disciplinary committee; group therapy; continuity of contact with the institution after parole. Between 1955 and 1962, 81 inmates had been paroled; of these, 65% have not violated parole by commission of a crime.

"Washington completed in 1964 a twenty bed unit for the male defective delinquent at Rainier School, Buckley, Washington (one of four state institutions for the retarded). Ages range from 13 to 19 but the lower age limit will be changed to 8. This is a maximum security unit, self sufficient with regard to staff and facilities for school, occupational therapy, work training, etc. Direction of the unit will be taken over by a Ph.D. psychologist with research training. A learning approach using tangible token reinforcement is being attempted at present, in order to condition "social and cooperative behavior" as well as training in self-help skills, care of belongings, academics, recreation, crafts, etc, on the premise that defective delinquents are not controlled by the usual social and symbolic reinforcement which conditions the "good" behavior of normal subjects. It is too early to assess results of this program, but it looks most promising.

Situation in Minnesota

What of the defective delinquent in Minnesota? Mildred Thomson, in her recent review of mental retardation progress in Minnesota, (18), tells us that provision for segregating "young incorrigibles and defective delinquents" at Red Wing was recommended as early as 1917, but that no action was taken. Again in 1940 the warden at St. Cloud suggested placing the male defectives in his institution under a special dormitory plan, but it was decided by the Advisory Committee that the special legislation required could not be obtained at that time. Finally, in 1945 the legislature authorized use of a dormitory at St. Cloud Reformatory for the now defunct Annex for Defective Delinquents. Although the 67 men admitted initially presented "serious behavior problems," the training program instituted at the A.D.D. had "phenomenal rehabilitative results."

The Annex, during its eighteen year existence, served 291 adult males (over 18), with about 60 to 75 maintained yearly. Intelligence range was generally about 50 to 80. Delinquencies ranged from "difficult to manage in the community or institution" to major felonies; all were under State guardianship and were committed as mentally deficient wards, rather than as criminal offenders.

The Major treatment goal of the ADD is described by Shirley Bengston, Director of Casework Services for the Mentally Deficient, Minnesota Department of Public Welfare, as "making law-abiding, self-supporting citizens of these men. The goal was to be accomplished by teaching the men (1) the difference between right and wrongs (2) that they were responsible for their own acts; (3) that they could succeed if they tried hard enough. As Ralph Rosenberger, formerly educational director of the Annex, puts it "The program consisted primarily of setting strict limits for the mentally deficient in a setting where there was basic respect for the dignity of the individual". Work training, social development (group therapy) sessions, practical education in such matters as why one needs a social security card and how to get it,

relied on. We used as our working definition for the defective delinquent: an individual (1) whose behavior creates or has created a danger to himself or to others (which may or may not include actual adjudication), and (2) who has been psychologically assessed as mentally retarded.

The State institutions for the mentally retarded reported as follows:

Institution	# of DD's Adult or Juvenile	Range of Intelligence:				Ages:		Average # Over Last 10 Years
		Below 35	35- 60	60- 75	75 & Above	Below 16	Above 16	
Brainerd	3	0	1	2	0	0	4	4
Owatonna	19	0	7	12	5	9	15	20
Faribault	36	0	24	12	0	1	35	28
Cambridge	<u>110</u>	<u>5</u>	<u>66</u>	<u>39</u>	<u>0</u>	<u>16</u>	<u>94</u>	<u>85</u>
Total	168	5	98	65	5	26	148	137

Dr. Richard Bartman, Director of Children's Mental Health Programs for the State of Minnesota, estimates that about two thirds of the total would be an "acting out" group who could be accommodated within the State institutions if more staff and stricter security measures were available, but that the remaining one-third would probably require a greater level of security than can be provided in a Welfare setting. For the latter group, who according to Dr. Bartman, are very destructive, run away in large numbers, and occasionally kill other patients, he advocates a maximum security facility with a highly structured program. At present these dangerous individuals are sent to St. Peter Security Hospital.

Dr. Bartman stresses the point that both the "hard core" and the "garden variety" defective delinquents require a combination of security measures and therapeutic and educational programs. Either aspect is useless without the other. He feels that the detrimental effect on retardates of contact with "normal" criminals in a Corrections setting is a spurious issue based on an over-evaluation of the importance of their intellectual retardation, as compared with their psychopathology which he

believes is much more significant.

Dr. E. J. Engberg, Superintendent at Faribault State School and Hospital, laments the closing down of the Annex and feels that "at Faribault it will soon become a very serious problem to take care of (the defective delinquents) and will tend to disrupt treatment, educational and vocational training programs". Dr. Engberg also notes that there are no security buildings at Faribault for either sex,

C. M. Henderson, Superintendent at Owatonna State School, anticipates an increase in intake of defective delinquents since they are now admitting only those children too disturbed to remain in special classes in the community. He feels that in the near future Owatonna will need locked units for proper control of severely acting-out children, as well as help in medical-neurological diagnosis and drug therapy; that an increase in staff psychologists, teachers of the emotionally disturbed, social workers, etc, is needed in order to provide group counseling and therapy for the delinquent. Owatonna is presently trying to set up a closed facility for the "hard core" defective delinquents.

Dr. Harold Robb, former Director of Clinical Programming at Brainerd State School and Hospital, observes that he is fortunate in having but a few defective delinquents, because "if they don't like us, there is little to prevent them from walking away". He believes that a closed unit for about 40 to 50 patients who function within the control of a built-in system of simple rewards and punishments might be effective.

Such a unit, set up for a small number of male patients, has been in operation for two years at Cambridge State School and Hospital. Dr. Bartman feels that the combination of strict limits plus acceptance and love afforded by this treatment unit at Cambridge is an ideal therapeutic milieu for the "garden-variety defective delinquent. He said that these individuals present a constant problem in the institutions in terms of the disproportionate amount of staff time and energy they demand, their disruptive effect on other patients and their contribution to depressed morale on the wards.

The Treatment Unit will shortly expand, under a Federal grant, to include facilities for delinquent, girls, as well as a more comprehensive program for the male patients.

It is entirely feasible that such Treatment Units might be established at the other State institutions for the retarded.

State correctional institutions listed a total of 198 defective delinquents in all institutions as of June 30, 1964, with a concentration of 104 at Stillwater (per 983 population) and 30 at St. Cloud (per 417 population).

Corrections Commissioner Ray Lappegaard, together with other members of the Corrections Department interviewed minimized the magnitude of the special problems presented by the defective delinquent in the Corrections institutional population. They agreed with Dr. Bartman that the relatively small number of dangerous criminals in the defective group need maximum security within the confines of a penal or psychiatric institution. They would like to see all retarded individuals within correctional institutions receive special treatment in the form of work-vocational training specially geared to their level. At present the only special programs which exist in the correctional setting are "a few remedial programs for the mentally retarded and for those...retarded in school grade placement".

Commissioner Lappegaard would like to see a reactivation of the Annex for Defective Delinquents, although not necessarily at the same site. He did not feel that contact between retarded and normal inmates would be detrimental to either group.

As for the problem presented by the defective delinquent in the community, opinions have varied. Probation officers and other professional workers polled from State Probation staff and from Hennepin County claimed that the defective delinquent presents no particular problem in their caseloads, that he is treated on the same therapeutic basis as a normal delinquent. On the other hand, the feeling at the Ramsey County Probation Department is that the mentally retarded

delinquent occupies a prominent place in the average caseload and is by no means receiving the special treatment or training he needs. A recent Ramsey County survey indicated that slightly under 20% of the total male probation office caseload have I.Q.'s between 50 and 85; and that out of 1,000 boys in the 16 to 20 age group, 192 have I.Q.'s in the stated range. Again, in a group of 80 boys in residence in the county institution for delinquent boys, 24% have I.Q.'s from 50 to 85. (Project for Vocational Rehabilitation of Mentally Retarded Delinquents).

Project 681, a study of school and rehabilitation needs of educable retardates in the Minneapolis school system (), indicates that, in a group of 423 subjects, a significantly higher percentage of special class boys and girls, (up to age 18) were "delinquent" than were normal persons of the same age. 57% of former special class boys had police records involving either serious or minor crime by the age of 18, as compared with 37% "normal" Minneapolis boys. 38% of the special class boys had committed serious offense. Likewise, 24% of special class girls had records of crime by age 18, compared with 11.3% of "normal" girls, 11% of the boys had serious crime records as adults. The recidivism rate for this group was over 60%. (, p. 53) 12% of the group said that they had been or were currently on probation. (p. 76)

The writers of Project 681 explain that, since about two thirds of the educable retarded come from "high-mobility, high-absentee, high-delinquency neighborhoods... some of the characteristics of the retarded might more accurately be attributed to their sociological identity." (, p. 87) And, further, that delinquencies of the retarded may be a feature of their neighborhoods rather than a feature of retardation". (p. 93)

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